IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 925 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRASINH BHARATSINH SARVAIYA

Versus

KIRITSINH BALVANTSINH JADEJA

Appearance:

1. Civil Revision Application No. 925 of 2002

MR. P.M. THAKKAR, SR. ADVOCATE WITH MR. PAHWA, ADVOCATE, or Petitioner No. 1

MR BHARAT T RAO for Respondent No. 1

SERVED BY AFFIX.(N) for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21/07/2003

ORAL JUDGEMENT

1. Rule. Mr. B.T. Rao, learned advocate for respondent No. 1, waives service of rule.

1.1 Rajendrasinh Bharatsinh Sarvaiya, petitioner, original third party, has filed this Revision Application under Section 115 of the C.P.C., challenging the judgement and order dated 11.2.2002 passed by the Second Joint Civil Judge (S.D.), Bhavnagar - order below Exh. 12 in Regular Civil Suit No. 465 of 2001. The learned Judge by his impugned judgement was pleased to reject the application at Exh. 12 filed by the petitioner for joining as party defendant under the provisions of Order 1 Rule 10 of the C.P.C.

2. There is a property situated at Krishnanagar, near Manekwadi, on Municipal Leasehold plot bearing Survey No. 558-559/B, admeasuring 719.56 sq. mtr. at Bhavnagar (hereinafter referred to as "the suit property".

BACKGROUND OF THE MATTER:

3. Dineshbhai Rajaram Makwana and Rajeshbhai Rajaram Makwana purchased the suit property from one Mr. Bhogilal Prahladbhai Patel of Vallabhbhai & Savitaben Patel on 23.8.1991 by registered Sale Deed and thereby they became owner of the said suit property.

3.1 It appears from the record that Shri Dineshbhai Rajaram and Rajeshbhai Rajaram (hereinafter referred to as "the original owners") had transferred the suit property to Sanjeev A. Jain and Neeta S. Jain by unregistered Agreement to Sale dated 3.6.1994. Sajeev A. Jain and Neeta S. Jain had transferred the suit property by unregistered Sale Agreement dated 28.12.1999 to Kadarbhai K. Pirwani. The possession of the property was handed over to Kadarbhai K. Pirwani, respondent No. 2. It appears that thereafter Kadarbhai K. Pirwani, respondent No. 1, by Satakhat dated 24.7.2001, had transferred the suit property in favour of Kiritsinh B. Jadeja, respondent No. 1 which Sale Deed came to be registered on 25.7.2001 by Kadarbhai K. Pirwani.

3.2 It appears that the original owner transferred the suit property by registered Sale Deed on 30.10.2001 in favour of Rajendrasinh B. Sarvaiya.

PRESENT CONTROVERSY:

4. It appears that Kiritsinh B. Jadeja, respondent No. 1 herein, original plaintiff filed suit for

declaration and injunction regarding the suit property against Kadarbhai K.Pirwani, respondent No. 2, before the learned Civil Judge (S.D.), Bhavnagar, being Regular Civil Suit No. 465 of 2001. The said suit was filed on 18.9.2001. Along with the said suit, the plaintiff filed an application for temporary injunction and also filed another application for an appointment of Court Commissioner. In the plaint and other related application the plaintiff prayed that the defendant has given Satakhat which is produced at Exh. marked 4/1. The plaintiff submitted that they have requested the defendant for sale deed but the defendant is not prepared to execute the Sale Deed. In view of the same, from the record it appears that the defendant has tried to sell the suit property to somebody else. In view of the same, the plaintiff filed a suit for declaration and injunction praying inter alia that the defendant who claimed to be owner be restrained from alienating or transferring the property to anybody else through himself or through his agent, servant and he cannot create any third party right in the suit property in this regard. It may be noted that in the said suit the plaintiff alleged that the defendant is the owner and in possession of the suit property. The defendant may not execute any sale deed except in favour of the plaintiff.

5. In this matter the trial court by its order dated 24.9.2001 granted injunction in favour of the plaintiff as the defendant failed to execute the sale deed. Originally the trial court granted ex-parte injunction on 18.9.2001. Thereafter, on 24.9.2001 the learned trial Court passed order below Exh. 5 confirming the order of injunction which was granted on 18.9.2001. From the record it appears that the defendant did not seriously contest the suit of the plaintiff.

6. The present petitioner Rajendrasinh Bharatsinh Sarvaiya came to know that the trial court has granted an injunction in favour of the suit property, he had filed an application in November 2001 before the trial court at Exh. 12 with a prayer that he may be joined as party in the said suit proceedings under Order 1 Rule 10 of the C.P.C. along with Order 6 Rule 17 read with Section 151 of the C.P.C. In the said application the petitioner contended that he has entered into a Registered Sale Deed with the original owners of the suit property through a registered document and therefore the petitioner is the legal owner of the suit property, so the petitioner is a necessary as well as proper party. It was submitted that the petitioner has better title than opponent No. 1 and 2. It was also submitted that without joining the

petitioner, the suit cannot be decided effectively. It was also contended that the suit is filed by the plaintiff in collusion with the defendant with an ulterior motive to grab the suit property illegally through the order of the Civil Court. It appears that the original plaintiff Kirtisinh B. Jadeja filed reply to the said application at Exh. 24 on 16.1.2002. In the said application it was contended that the original plaintiff has no privity of contract and therefore the said application is not maintainable at law.

7. The learned trial judge after hearing the parties at length by his reasoned order dated 11.2.2002 was pleased to reject the application for joining the petitioner as third party. The learned trial judge has relied on the judgement in the case of RASIKLAL SHANKERLAL SONI VS. NATVERLAL SHANKERLAL UPADHYAYA reported in AIR 1975 GUJARAT 178 = 16 GLR 533.

8. Being aggrieved and dissatisfied with the aforesaid judgement and order of the learned judge the petitioner has filed this petition under Section 15 of the C.P.C. on 8.5.2002. When the matter was placed for hearing before this Court on 2.9.202, this Court (Coram: K.A. Puj, J) issued notice for final disposal, returnable on 16.9.2002. Pursuant to that notice Mr. B.T. Rao, learned advocate appeared on behalf of respondent No. 1.

8.1 The matter is placed for hearing when Mr. P.M. Thakker, learned sr. advocte with Mr. Navin Pahwa, learned advocate, appeared on behalf of the petitioner. The learned counsel for the petitioner has relied on Order 1 Rule 10 (2) of the C.P.C. which reads as under:

"Order I - Parties to suits -

Rule 10(2) - Court may strike out or add parties - The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

9. After relying upon the said provisions of the C.P.C., the learned counsel for the petitioner has submitted that in the present case in view of the above referred provisions and looking to the facts that the prime question involved in the suit is the title to the suit property and the same is with the petitioner only. The defendants have no title whatsoever and therefore, in view of the above referred provisions of law, it is clear that the petitioner is the necessary as well as proper party in the above referred to suit. He submitted that the learned judge has failed to appreciate that the right to relief in respect of the act or transaction as alleged by the opponent, original plaintiff, is existing against the petitioner directly. He submitted that the petitioner has entered into a registered Sale Deed with the original owners of the suit property and that opponent No. 2 has never entered into an agreement with the original owner through a registered document. Therefore, the petitioner has better title in respect of the suit property than opponent No. 2. In view of these facts and circumstances, without joining the petitioner as a party in the suit, the learned trial court cannot decide the issue and the question involved in the suit cannot be decided effectively and finally without joining the petitioner. Therefore, the impugned order is required to be quashed and set aside and the petitioner is required to be joined as a party in the aforesaid suit.

10.1 The learned counsel for the petitioner further relied on the decision of the Hon'ble Supreme Court in the case of SAVITRI DEVI VS. DISTRICT JUDGE reported in (1999) 2 SCC 577 in which on page 580 at para 9 the Hon'ble Supreme Court has observed as follows:

> "Order I Rule 10 C.P.C. enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code."

10.2 The learned counsel for the petitioner further relied on the decision of this Court in the case of NAVNITBHAI HARMANBHAI PATEL VS. PATEL RAMESHBHAI AMBALAL reported in 1996(2) G.L.R. 129. He has stated that the learned Judge, MR. Justice S.D. Shah (as he was then)

in para 7 of his judgement referred to the judgement of the Hon'ble Supreme Court in the case of RAMESH HIRANAND KUNDANMAL VS. THE MUNICIPAL CORPORATION OF GREATER BOMBAY reported in 1992(2) JT 116. For appreciating the aforesaid judgement of the Hon'ble Supreme Court, he has in paras 7 and 8 of the judgement quoted the observations of the Hon'ble Supreme Court in the case RAMESH HIRANAND KUNDANMAL (supra) particularly paragraph Nos. 5, 6 and 8 thus:-

10.2.1 "Para 7 - The learned Counsel appearing for third party also relied upon the decision of the Apex Court in the recent case of Ramesh Hiranand Kundanmal Vs. The Municipal Corporation of Greater Bombay, reported in 1992(2) JT 116. After referring to the decision of the Apex Court in the case of Razia Begum (supra) the Apex Court made pertinent observations in paras 5, 6 & 8 of the reported judgement which are required to be reproduced herein below:

10.2.2 "5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is, no doubt, dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order 1 Rule 3 to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of the parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle the question involved in the suit."

10.2.3 "6. Sub-Rule (2) of Rule 10 gives a wide

discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on the record. The question of impleadment of a party has to be decided on the touch-stone of Order 1 Rule 10 which provides that only a necessary or proper party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

10.2.4 "8. The case really turns on the true construction of the Rule, in particular the meaning of the word "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the Intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join the Intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions".

10.2.5 Para 8 - From the aforesaid observations made by the Apex Court it becomes clear that the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action. The question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of rule between the direct interest or legal interest or commercial

interest. It is, therefore, necessary that the person must be directly or legally interested in the final result of the action, i.e. to say that the result of the litigation should be such which would affect him illegally, i.e. by curtailing his legal rights."

11. The learned counsel for the petitioner has submitted that the learned trial judge did not properly appreciate the judgement of this Court in RASIKLAL SHANKERLAL SONI VS. NATVERLAL SHANKERLAL UPADHAYA AND OTHERS reported in 16 G.L.R. 533. He therefore submitted that the facts in the case of RASIKLAL SHANKERLAL SONI (supra) are quite different and in that case the suit was also for specific performance and in that case the prayer of the plaintiff that the original defendant to the suit should execute documents in the plaintiff's favour or the same should be executed through Court. In that case joining party has filed an application on the ground that they are sisters of original defendant No. 1 and that father has registered will giving property including the suit property in their favour and therefore they had interest in the said property. In that context, learned Judge of this Court held that joining party cannot be said to be a necessary party for adjudicating the question in the suit. In that case no relief was claimed against the opponent and the suit was merely for enforcement of agreement of sale between the plaintiff and the defendant No. 1. He has stated that the Court has rightly decided the said matter but the Court has laid down the principle that in exercising the discretion the Court will invariably take into account wishes of the plaintiff before adding a third person as a defendant to his suit. Only in exceptional cases, where the Court finds that the addition of the new defendant is absolutely necessary to enable it to adjudicate effectively and completely the matter in controversy between the parties, will it add a person as a defendant without the consent of the plaintiff. He has submitted that the ratio of that judgement has been completely ignored by the learned trial judge and therefore also the decision of the trial judge is required to be quashed and set aside.

12. Mr. B.T. Rao, learned advocate for respondent No. 1 has appeared and contended that the present revision application is not maintainable at law in view of the amendment in Section 115 C.P.C.

12.1 In any view of the matter even if he has stated

that the Civil Revision Application is maintainable he has stated that the respondent has legal and valid title from Kadarbhai K. Pirwani and therefore the present suit filed by the plaintiff against the defendant is perfectly a legal remedy and even whatever contentions which the petitioner has raised before this Court, are at all to be agitated in a suit which the petitioner can file separately independent of the suit challenging the action but he has no right to be joined as party in the present suit. In support of the aforesaid contention Mr. Rao has relied on the judgement of the Hon'ble Supreme Court in the case of RAMESH HIRACHAND KUNDANMAL VS. MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS reported in (1992) 2 SCC 524. He has stated that real ratio of the judgement is not under paragraph 8 but in paragraph 14 of the judgement. Paragraph 14 of the said judgement reads thus:

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say taht the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplaes joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon Vs. Raphael Tuck & Sons Ltd. (1956) 1 All ER 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A.

Vs. Bank of England (1950) 2 All ER 605, that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in waht would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

"The test is "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights." "

12.2 He has also relied on another judgement of the Hon'ble Supreme Court in the case of ANIL KUMAR SINGH VS. SHIVNATH MISHRA reported in (1995) 3 SCC 147. In the said judgement Order 1 Rule 3 is not applicable to the suit for specific performance because admittedly the respondent was not a party to the contract. He has also relied on another judgement of the Hon'ble Supreme Court in the case of J.J. LAL PVT. LTD. VS. M.R. MURALI reported in AIR 2002 SC 1061.

13. In reply to the aforesaid contention, Mr. Thakker, learned senior advocate for the petitioner has submitted that it is no doubt true that in this case the suit is pending and the trial Court has rejected the application but so far as the applicant is concerned once his application is rejected by the trial Court, he is out of Court and to that extent the application filed to be joined as third party is disposed of and therefore the present revision application is maintainable at law.

13.1 In view of this matter he has further stated that in this case the plaintiff has filed the suit for injunction and declaration that by virtue of the sale agreement the defendant is prevented from transferring or alienating the suit property in favour of any third party. He submitted that the original owner of the property is the petitioner and the suit between the plaintiff and the defendant is a collusive suit and by obtaining the order the defendant has to create a right in favour of the plaintiff behind the back of the petitioner. He submitted that when the petitioner is admittedly the owner by executing registered Sale Deed, through other process the plaintiff and the defendant cannot claim any other right, title , interest in the suit property through process of law and in that process he is entitled to be heard. Therefore, the petitioner is both necessary party and proper party. He submitted that all the judgements which have been relied on by the learned counsel for the respondent are relating to the

question of suit for specific performance and whether the party was a party to the contract or not. In this case admittedly the suit is for declaration and injunction and therefore the aforesaid judgements, though it is binding on me, are not applicable to the present case. In fact, the judgement relied on by the learned counsel for the petitioner i.e. the judgement of this Court in the case of NAVNITBHAI HARMANBHAI PATEL VS. PATEL RAMESHBHAI AMBALAL (supra) is applicable to the facts of the case. He further submitted that the contention of the respondent that the plaintiff has right to file separate suit, that there is already a judgement of this Court in the case of BHAGWANJI VISHAVJI THAKKAR VS. PRAVINCHANDRA JIVANBHAI PATADIA & ANR. reported in 36(2) GLR 1438. In that case in para 16 of the judgement, this Court has held that in this case the third party cannot file second suit and the trial Court as Court of co-ordinate jurisdiction lacks the jurisdiction to grant inconsistent or contradictory injunction which would defeat the ends of justice and which would render meaningless the earlier orders granted by the superior Courts.

14. I have considered the provisions of Order I Rule 10 of the C.P.C. The principle of Order I Rule 10 particularly clause (2) is that the primary meaning of a party is a litigant who has a part to play in the proceedings. A necessary party is one without whom no order can be effectively made. A necessary party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. The necessary consideration before the Court while determining the question of impleadment of a party to the proceedings is whether the said party is necessary or proper party and presence of such party before the Court is necessary for complete and effective adjudication of the subject-matter. The proper party is one whose presence is considered appropriate for effective decision of case. I have considered the judgement of the Hon'ble Supreme Court in the case of SAVITRI DEVI VS. DISTRICT JUDGE (supra) and RAMESH HIRANAND KUNDANMAL VS. THE MUNICIPAL CORPORATION OF GREATER BOMBAY (supra) which has been relied upon by this Court in the case of NAVNITBHAI HARMANBHAI PATEL VS. PATEL RAMESHBHAI AMBALAL (supra) in which it is held that the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action. The question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. In this case the petitioner is a necessary party to adjudicate the right between the respondent and the petitioner in connection

with the suit property. I have also considered the judgement of this Court in the case of RASIKLAL SHANKERLAL SONI VS. NATVERLAL SHANKERLAL UPADHAYA AND OTHERS reported in 16 GLR 533. I fully agree with the submission made by the learned counsel for the petitioner that the said decision does not help the case of the respondent and the learned trial Judge has not appreciated the ratio laid down in that case and therefore the learned Judge has committed a serious error in appreciating the principle laid down in this case.

14.1 I have also considered the decision of the Hon'ble Supreme Court in the case of ANIL KUMAR SINGH VS. SHIVNATH MISHRA (supra), RAMESH HIRACHAND KUNDANMAL VS. MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS (supra) and also J.J. LAL PVT. LTD. VS. M.R. MURALI (supra) cited by the learned counsel for the respondent. However, the principles laid down by the Hon'ble Supreme Court are binding on me but these principles do not help the case of the respondent.

14.2 In view of the same, I am of the view that the petitioner is a proper and necessary party and the learned Judge has not properly considered the provisions of Order I Rule 10(2) of the C.P.C. and other decisions cited in this regard. I fully accept the contentions raised by the learned counsel for the petitioner and I do not accept the contention of Mr. B.T. Rao, learned counsel for the respondent. The Revision Application is, therefore, allowed. The order of the learned trial Judge is quashed and set aside. Rule is made absolute with no order as to costs. The learned trial judge is requested to hear and decide the suit in accordance with law. Direct service is permitted.

15. The learned judge has not properly appreciated the general rule as to transfer of title. "Although the buyer of goods bought from a seller who had no title to sell them may have remedies against the seller, yet, as a rule, the sale gives him no title to the goods as against the owner, and, as between the buyer and the owner, the maxim "caveat emptor" applies. For the general principle is that where goods are sold by a person who is not the owner, and who does not sell under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had." (See: Broom's Legal Maxims, 10th Edition, page 546).

16 The learned Judge has not appreciated the principle of "caveat emptor" and also the principle laid down under Section 27 of the Sale of Goods Act

particularly nemo dat quod non habet. Section 27 expresses the general proposition that no one can give what he has not got, and if one deals with the goods of another without his authority, the transaction is as against that other nugatory in law. (See: The Sale of Goods Act by Pollock & Mulla, 5th Edition, page 196).

17. It was also an admitted fact that the petitioner is the owner of the property and Kiritsinh Balvantsinh Jadeja, respondent No. 1 has obtained the property from Kadarbhai Kasambhai Pirwani who has obtained the property by unregistered agreement from Sanjeev A. Jain and Neeta S. Jain who has also obtained the property from the original owner Dinesh Rajaram and Rajeshbhai Rajaram by unregistered agreement. The learned judge ought to have considered that is the value of title and interest of the property in question of Kiritsinh B. Jadeja and what is the title and interest of Rajendrasinh B. Sarvaiya. After considering the rival contention, he ought to have considered the application filed by the petitioner who is admittedly shown that he is the owner of the said property in question when the suit is in connection with declaration and title to the property. Therefore, the petitioner is a necessary and proper party in this behalf.

18. In view of the aforesaid circumstances, this Civil Revision Application filed by Rajendrasinh Bharatsinh Sarvaiya, petitioner, third party, is allowed. The judgement and order dated 11.2.2002 passed by the learned Second Joint Civil Judge (S.D.), Bhavnagar order below Exh. 12 in Regular Civil Suit No. 465 of 2001 is quashed and set aside. The learned judge is directed to join Rajendrasinh Bharatsinh Sarvaiya as party in the main proceedings and thereafter the learned judge is requested to decide the matter in accordance with law.

(K.M. MEHTA, J)

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